

*IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA*

***PLAINTIFF'S MOTION IN LIMINE  
TO PRECLUDE WITNESSES***

AND NOW, Plaintiff, Michael Marcavage, by his attorneys Shields & Hoppe, LLP, hereby files the following ***Motion In Limine To Preclude Witnesses*** and assigns the following reasons in support thereof:

1. On July 28, 2006, Defendants filed their Pre-Trial Memorandum in this matter.
2. In their Pre-Trial Memorandum Defendants provided a list of witnesses they expect to call at trial, these witnesses include the following:
  - a. Deputy Commissioner Patricia Fox
  - b. Sgt Craig Smith
  - c. Sgt Edward Greer
  - d. Officer Crosby
3. Defendant has never previously identified these individuals as possible witnesses in this matter.
4. Rule 26(a), F.R.C.P. requires that that parties provide initial disclosures which includes disclosing the names and address of each individual likely to have discoverable information which the disclosing party may use to support its claims or defenses.

5. In their Rule 26 disclosures, Defendants did not identify Deputy Commissioner Patricia Fox, Sgt Craig Smith, Sgt Edward Greer, Officer Crosby as witnesses in this matter. See Exhibit "A" attached hereto.

6. Additionally, Plaintiff served Defendants with Interrogatories which requested, among other things, that Defendants identify any individuals who had knowledge of the facts set forth in the Complaint and any person who had knowledge of facts relevant to the action. See Exhibit "B" attached hereto.

7. Defendants did not identify Deputy Commissioner Patricia Fox, Sgt Craig Smith, Sgt Edward Greer, Officer Crosby as such witnesses. See Exhibit "C" attached hereto.

8. The discovery deadline in this matter expired on November 30, 2005.

9. Trial in this matter begins on August 7, 2006.

10. This case has been going through the discovery process for more than a year and a half.

11. Defendants had ample opportunity to identify these witnesses within the discovery period.

12. Plaintiffs had no reason to believe that Defendants considered these individuals to be witnesses or intended to call these witnesses at trial.

13. Had Defendants identified these individuals as witnesses, Plaintiff would have taken their depositions.

14. As discovery is ended, Plaintiff is not able to cure the prejudice to Plaintiff of the untimely identification of these witnesses. See, *Great Bay Hotel & Casino v. Tose*, 34 F.3d 1227, 1236 (3d Cir.1994); *Stambler v. RSA Security, Inc.*, 212 F.R.D. 470, \*471 (D.Del.,2003)

15. Plaintiff is requesting that this Court preclude Defendants from calling Deputy

Commissioner Patricia Fox, Sgt Craig Smith, Sgt Edward Greer, Officer Crosby as witnesses at trial.

WHEREFORE, Plaintiff, Michael Marcavage, requests that his ***Motion In Limine To Preclude Witnesses*** be Granted.

Respectfully submitted:

***SHIELDS & HOPPE, LLP***

By: /s/ L. Theodore Hoppe, Jr.  
L. Theodore Hoppe, Jr., Esquire  
Attorney I.D. No. 62082  
C. Scott Shields, Esquire  
Attorney I.D. No. 68837  
Amanda L.H. Brinton, Esquire  
Attorney I.D. No. 88882  
223 N. Monroe Street  
PO Box 23  
Media, PA 19063  
(610) 892-7777  
(610) 892-7525 (fax)  
Attorneys for Plaintiff

Date: 7/31/06